United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 20-0726**
	)	**Issued: January 26, 2022**
U.S. POSTAL SERVICE, POLYTECHNIC POST OFFICE, Fort Worth, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 13, 2020 appellant filed a timely appeal from September 9, 2019 and January 17, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the January 17, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

ISSUE

The issue is whether appellant has met his burden of proof to establish a recurrence of total disability commencing August 25, 2018, causally related to his accepted September 25, 2017 employment injury.

FACTUAL HISTORY

On September 26, 2017 appellant, then a 38-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 25, 2017 he twisted his left knee when he slipped and struck his knee exiting a vehicle while in the performance of duty. He stopped work on that date. OWCP accepted appellant's claim for left knee contusion, left knee derangement of posterior horn of lateral meniscus due to old tear or injury, and left knee sprain of the medial collateral ligament.[3] It paid him wage-loss compensation on the supplemental rolls, effective November 11, 2017, and placed him on the periodic rolls effective January 7, 2018.

On April 20, 2018 the employing establishment offered appellant a modified rural carrier position. The duties of the position required casing and carrying a route for one to eight hours. The physical requirements of the position involved lifting letters and parcels weighing up to 35 pounds, sitting and standing to case mail, walking to load vehicle/mail to ledge and deliver parcels, pushing/pulling to load/unload vehicle, and reaching above the shoulder for 1 to 2 hours, simple grasping to case/deliver mail for 1 to 6 hours, driving to deliver mail for 4 hours, and no kneeling.

Appellant accepted the modified-duty position and returned to full-time, limited-duty work on April 30, 2018.

Appellant continued to receive medical treatment. In an August 24, 2018 duty status report (Form CA-17), Dr. Christopher R. Mann, an osteopath who specializes in occupational and family medicine, noted diagnoses of left knee sprain, left knee contusion, and left knee derangement. He reported that appellant could work full time with restrictions of combined standing and walking for 1 hour every 4 hours of work, pulling/pushing up to 30 pounds for 1 to 2 hours per day, operating a motor vehicle for 1 to 2 hours per day, and no climbing, kneeling, bending, stooping, or twisting.

According to a memorandum of telephone call (Form CA-110) dated August 27, 2018, appellant indicated that his work was causing swelling and pain in his knees. He noted that his physician changed his work restrictions. Appellant explained that when he went to work on Sunday, the employing establishment did not have work within his restrictions.

On August 31, 2018 appellant filed a claim for compensation (Form CA-7) for intermittent dates of total and partial disability during the period August 18 through 31, 2018. On the reverse side of the claim form, G.N., an employing establishment human resource specialist, confirmed that appellant was claiming 38.65 hours of leave without pay (LWOP). She also reported that the

[3] OWCP initially accepted appellant's claim for right knee contusion, right knee derangement of posterior hom of lateral meniscus due to old tear or injury, and right knee sprain of the medial collateral ligament. It revised his accepted conditions to reflect his accepted left knee conditions in a December 7, 2017 decision.

employing establishment opposed compensation for all dates, except for four hours on August 24, 2018. G.N. noted that appellant had a job offer on file, which he refused to work. On the attached time analysis (Form CA-7a), appellant claimed four hours of LWOP on August 24, 2018 due to a physician's appointment. He also indicated that beginning August 25, 2018 he was sent home by his supervisor because there was "no work in restriction."

In a September 13, 2018 development letter, OWCP informed appellant that the documentation received to date was insufficient to establish his claim for wage-loss compensation benefits in its entirety for the period August 18 through 31, 2018.[4] It advised him of the type of medical evidence necessary to establish the remaining period of disability from August 25 through 31, 2018 and afforded him 30 days to submit the necessary evidence.

Appellant additionally filed CA-7 forms requesting wage-loss compensation for total disability beginning September 1, 2018. In the attached CA-7a forms, he indicated that he was sent home because no work was available. An agency official for the employing establishment also noted that appellant had a job offer and that he had submitted new medical evidence with more restrictive limitations.

In a September 17, 2018 Form CA-17, Dr. Mann indicated that appellant could work full time, limited duty with restrictions of sitting up to 6 hours, combined standing, and walking for up to 1 hour every 4 hours per day, pushing/pulling up to 30 pounds for 1 to 2 hours per day, and driving a motor vehicle for 1 to 2 hours per day.

A September 24, 2018 left knee magnetic resonance imaging (MRI) scan demonstrated grade 3 chondromalacia in the anterior femoral trochlea, grade 2-3 chondromalacia laterally in the medial femoral condyle, and possible mild chronic sprain in the PCL.

OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions to Dr. George Wharton, a Board-certified orthopedic surgeon, for a second-opinion evaluation regarding the status of appellant's work-related injury and ability to work. In a September 25, 2018 report, Dr. Wharton noted his review of the SOAF and the medical record. He recounted the September 25, 2017 employment injury and indicated that appellant's claim was accepted for left knee derangement of posterior horn of the lateral meniscus due to old tear or injury, left knee sprain, and left knee contusion. Dr. Wharton noted appellant's current complaints of aching pain in the left knee. Upon physical examination, he observed normal gait and no sensory deficits in the bilateral lower extremities. Dr. Wharton reported normal palpation and no effusion or crepitation of the bilateral knees. Valgus stress, varus stress, Lachman, McMurray, and posterior drawer tests were negative bilaterally.

In response to OWCP's questions, Dr. Wharton opined that appellant had no evidence of significant residuals of his work-related left knee conditions. He indicated that appellant only had some mildly restricted left knee range of motion, but no evidence of swelling, weakness, or ligamentous instability. Dr. Wharton reported that appellant was not able to return to his date-of-injury job as a rural carrier, but could work at a medium-duty level, as outlined in his functional capacity evaluation (FCE). In a work capacity evaluation (Form OWCP-5c), he opined that

[4] OWCP authorized payment for four hours on August 24, 2018.

appellant had permanent restrictions of walking for four hours per day, bending/stooping for two hours per day, and pushing, pulling, and lifting up to 50 pounds for two hours per day.

An FCE report dated October 15, 2018 indicated that appellant was capable of performing medium-duty work.

In an October 17, 2018 Letter of Medical Recurrence, Dr. Mann noted that he had treated appellant since September 27, 2017 and that appellant had been working in a limited-duty rural carrier position. He recounted that he last examined appellant on August 24, 2018 after appellant had sustained a "spontaneous worsening" of his left knee injury on August 21, 2018. Dr. Mann noted that physical examination findings revealed decreased range of motion of the left knee, difficulty ambulating, and positive McMurray's and Apley's tests. He explained that due to appellant repetitively getting in and out of the vehicle to deliver mail, landing and twisting on his left knee, and prolonged standing and walking, appellant's symptoms had worsened. Dr. Mann reported that appellant's recurrent injury was severe enough to require modification of his work restrictions.

In an October 24, 2018 Form CA-17, Dr. Mann noted that appellant could work full time with restrictions of sitting for six hours per day, combined standing and walking for one hour per day, pulling/pushing up to 30 pounds for one hour per day, and driving a vehicle for one hour per day.

In a November 19, 2018 attending physician's report (Form CA-20), Dr. Mann noted the September 25, 2017 date of injury and diagnoses of left knee sprain, left knee derangement, and left knee contusion. He indicated that appellant was "disabled by work -- refused to accommodate 8-24-18."

By decision dated December 3, 2018, OWCP denied appellant's claim for total disability beginning August 25, 2018.

On December 24, 2018 appellant requested reconsideration.

Appellant submitted signed employing establishment Request for or Notification of Absence forms dated August 25 and 27, 2018. It indicated "no work available in my restrictions." In a signed employing establishment Request for or Notification of Absence form dated August 29, 2018, it was noted that appellant was sent home and told not to return until the employing establishment received a new job offer.

In CA-20 forms dated January 7 and February 18, 2019, Dr. Mann noted the September 25, 2017 date of injury and appellant's accepted left knee conditions. He reported that appellant had a material worsening of his disease and restrictions were changed on August 24, 2018, but appellant's work refused to accommodate.

In a February 5, 2019 examination report, Dr. Nicholas Iagulli, a Board-certified orthopedic surgeon, recounted appellant's complaints of left knee pain and swelling that originated when appellant stepped out of a mail truck at work. He reviewed appellant's history and noted left knee examination findings of tenderness over the lateral and medial joint lines and limited range of motion. Dr. Iagulli diagnosed complex tear of the medial meniscus of the left knee. He

completed a Form OWCP-5c indicating that appellant could work full-time modified-duty work with restrictions of no squatting and kneeling.

Appellant submitted an August 24, 2018 office visit report by Dr. Mann who recounted appellant's complaints of left knee pain. Upon examination of appellant's left knee, Dr. Mann observed tenderness to palpation of the patella and increased crepitus and edema. McMurray's and stress tests were positive. Dr. Mann diagnosed left knee contusion, left knee sprain, and left knee derangement of the posterior horn due to old tear/injury. He noted that appellant was having trouble standing and walking for a prolonged period of time at work when delivering mail. Dr. Mann explained that appellant's work restrictions were adjusted to allow him one hour maximum of standing and walking for every four hours of work, weight limit of 30 pounds, driving a vehicle for one to two hours per day, and no climbing, bending, stooping, and twisting.

In reports dated January 7 and February 18, 2019, Dr. Mann indicated that appellant was seen for continued left knee symptoms. He noted that on August 24, 2018 he had treated appellant for worsening symptoms and released appellant to work with stricter restrictions. Dr. Mann provided left knee examination findings and diagnosed left knee contusion, left knee sprain, and left knee internal derangement of an old tear.

OWCP also received a February 19, 2019 e-mail from T.D., a health and resource management specialist for the employing establishment, who indicated that the employing establishment had work available from August 25 through September 16, 2018. T.D. noted that the May 25, 2018 job offer was within the second opinion examiner's restrictions.

By decision dated March 11, 2019, OWCP denied modification of its prior decision.

On April 23, 2019 appellant requested reconsideration.

In an April 8, 2019 letter, Dr. Mann noted that there were "glaring omissions and erroneous statements of fact" in OWCP's prior decisions. He asserted that his previous reports clearly noted the objective physical examination findings that showed an objective worsening of appellant's left knee injury. Dr. Mann also clarified that he did not take appellant off work, but increased appellant's work restrictions.

Appellant continued to submit CA-17 forms dated March 11 through July 15, 2019 from Dr. Mann. Dr. Mann reported that appellant could work full time with restrictions of sitting for four hours per day, standing and walking for one to two hours per day, pushing and pulling up to 45 pounds for one to two hours per day, operating a vehicle for one to four hours per day, climbing a maximum of three to five steps, and no bending, stooping, kneeling, or twisting.

By decision dated September 9, 2019, OWCP denied modification of its prior decision.

On November 7, 2019 appellant requested reconsideration.

In an October 11, 2019 letter, Dr. Mann noted his disagreements with the September 9, 2019 OWCP decision. He reiterated that he never indicated that appellant was totally disabled, but provided new work restrictions because appellant's left knee condition had worsened.

Dr. Mann alleged that the employing establishment was unable to accommodate appellant's restrictions.

Appellant also submitted CA-17 forms dated September 20 and October 18, 2019 by Dr. Mann who reported that appellant could work full time with restrictions.

By decision dated January 17, 2020, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.[5] This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations.[6]

OWCP procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. The change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.[7]

When an employee who is disabled from the job he or she held when injured on account of employment-related residuals returns to a limited-duty position, or the medical evidence of record establishes that he or she can perform the limited-duty position, the employee has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and to show that he or she cannot perform such limited-duty work.[8] As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the limited-duty job requirements.[9]

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a

[5] 20 C.F.R. § 10.5(x); *T.J.*, Docket No. 18-0831 (issued March 23, 2020); *J.D.*, Docket No. 18-1533 (issued February 27, 2019).

[6] *Id.*

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2 (June 2013); *F.C.*, Docket No. 18-0334 (issued December 4, 2018).

[8] *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *D.W.*, Docket No. 19-1584 (issued July 9, 2020); *S.D.*, Docket No. 19-0955 (issued February 3, 2020); *Terry R. Hedman*, 38 ECAB 222 (1986).

[9] *Id.*

physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to employment injury, and supports that conclusion with medical reasoning.[10] Where no such rationale is present, the medical evidence is of diminished probative value.[11]

ANALYSIS

The Board finds that this case is not in posture for decision.

On August 31, 2018 appellant filed a claim for wage-loss compensation for the period August 18 through 31, 2018. On the attached Form CA-7a, he indicated that beginning August 25, 2018 he was sent home by his supervisor because no work was available within his restrictions. Appellant also provided a Request for or Notification or Absence form from the employing establishment dated August 29, 2018, which noted that he was sent home and told not to return until the employing establishment had a new job offer. As noted above, a recurrence of disability can be established when a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations.[12] As appellant alleged that the employing establishment was unable to accommodate his work restrictions, OWCP should have requested that the employing establishment confirm or deny in a statement from a knowledgeable supervisor as to the correctness of his assertion.[13]

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[14] It has an obligation to see that justice is done.[15] Thus, the Board will remand the case to OWCP to obtain a statement from a knowledgeable supervisor as to appellant's allegation that the employing establishment was unable to accommodate his work restrictions. Following any necessary further development, OWCP shall issue a *de novo* decision.

[10] *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *C.C.*, Docket No. 18-0719 (issued November 9, 2018); *Ronald A. Eldridge*, 53 ECAB 218 (2001).

[11] *E.M.*, Docket No. 19-0251 (issued May 16, 2019); *H.T.*, Docket No. 17-0209 (issued February 8, 2019); *Mary A. Ceglia*, Docket No. 04-0113 (issued July 22, 2004).

[12] *Supra* note 5.

[13] *See T.R.*, Docket No. 19-1611 (issued October 26, 2020); *see also P.H.*, Docket No. 20-0039 (issued April 23, 2020).

[14] *See e.g.*, *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[15] *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2019 and January 17, 2020 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 26, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board